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6/21/99**Issue Paper announcing settlement/Consent Decree for RD/RA at NL/Taracorp Superfund Site, Granite City, IL**Background:

As a result of smelting activities and battery recycling operations at the Site, large volumes of lead and other hazardous substances, including antimony, arsenic, barium, cadmium, chromium, mercury, nickel and zinc, were deposited at the Site. This lead waste contaminated not only the plant, but also the soil of residences located nearby within a 60 block area in three cities. Also, contaminated lead battery chips were physically placed in other residential areas as remote fill. The main industrial area has also been contaminated, and the huge waste pile still exists.

In 1986, EPA placed the Site on the National Priority List ("NPL"). Based on the information developed by that RI/FS, EPA issued a Record of Decision ("ROD") that stated that the remedy for the Site would include excavation of lead contaminated soil exceeding 500 parts per million ("ppm") in residential areas; excavation of all unpaved areas of the Main Industrial Area where lead concentrations exceeded 1000 ppm; concentration of various separate waste piles into one pile to be located at the plant; and capping of the waste pile.

On November 27, 1990, EPA issued a Unilateral Administrative Order ("UAO") to 49 potential responsible parties to carry out the remedy outlined above. None of the defendants complied with this order. NL and the generator defendants later named in this case, offered to perform part of the UAO, but refused to excavate soil located in residential areas that contained between 500 ppm and 1,000 ppm lead, arguing that the latter figure should be the cutoff point. Since the yards of about 1000 residences had lead contamination between 500 and 1,000 ppm, and only 350 had contamination at levels over 1,000 ppm, that meant that EPA would have to carry out the bulk of the remedy for the residences. Since EPA did not want to split the remedy, and believed that an averaging methodology was not appropriate for numerous reasons, EPA proceeded to perform the entire remedy itself.

As EPA entered into the removal actions, the City of Granite City (the City) intervened and filed a motion to restrain the remedy. The City and the

defendants claimed that cleanup of residential yards below 1,000 ppm could not be justified by the administrative record. An agreement was reached whereby the remedy was remanded to the agency and additional material was received to supplement the administrative record. The remand had the effect of enjoining the remediation of the contaminated yards, in that EPA (at the Court's urging) agreed not to pursue this part of the remedy. EPA did continue work on noncontroversial parts of the remedy, such as the remote fill areas. The only residential yards that were remediated during this time were certain residences that were contaminated at levels above 1,000 ppm.

During the remand, the defendants submitted volumes of information arguing that the proper level of cleanup was 1,000 ppm for the residential soil. Nevertheless, EPA reaffirmed its decision to require excavation of soils containing at least 500 p.m. of lead in a Decisional Document/Explanation of Significant Differences (DD/ESD) issued September 29, 1995. This document did modify the remedy by adding a requirement that ground water at the former NL facility be treated because additional testing had found contamination not identified in the RI/FS. Based on the DD/ESD, in the spring of 1996 EPA began to implement that part of the remedy requiring excavation of residential soil at levels above 500 ppm. The City once again filed a motion to restrain the remedy. The judge issued the rulings in 1996. EPA prevailed. EPA proceeded with all aspects of the remedy until, as indicated below, it permitted the generator defendants to take over the work in July of 1998.

The ruling by the court, and the implementation of the work by EPA prompted the Defendants to initiate settlement discussions. Separate settlement discussions have been undertaken with NL, as owner/operator, and the generator defendants. This settlement is with the generator defendants for an approximate \$30M value including work performed and payment of past costs plus a \$400,000 cash penalty, and a \$2,000,000 supplemental environmental project. EPA's current cost estimate for the remedy is \$60 million. The balance of all remaining unreimbursed response costs will be sought from NL.

EPA received a good faith offer from these generators, and in July 1998, they took over performance of the remedy with approval of EPA Region 5 in

order to maximize any savings attributable to performing the remedy, . They have been performing all remediation activities at the Site since that time. When the parties took over, EPA had remediated approximately 850 residences, and completed design of the cap for the pile.

The Consent Decree requires the Defendants to implement the required remedial design/remedial actions selected in the ROD/ESD, as well as payment of certain past costs, and a penalty, and performance of a supplemental environmental project . This settlement will address the residential contamination in approximately 1500 residences, as well as address the on-site areas by capping of the 250,000 ton slag pile, and preventing further leaching to groundwater. Additionally, the government will recover nearly \$9,000,000 of its past cost for remedial action. An aspect of this settlement that goes beyond the scope of the selected remedy is the \$2,000,000 Supplemental Environmental Project. This project will further serve the public interest by assessing risks at approximately 2700 homes, and remediating at least 50 high priority homes in the site area. Under the decree, the generator defendants will be entitled to the proceeds from subsequent De Minimis Settlements.

The primary public interest that is served by this agreement is to reduce the risk to the public from lead-contaminated soils in residential yards, and remote fill areas, to reduce the risk of airborne contamination, to reduce leaching potential of lead and other metals to the groundwater from the Taracorp slag pile, to prevent further migration of airborne emissions, and to prevent further migration of the contaminated groundwater.

All work will be completed next year.

Following are many pros to this settlement agreement:

- This decree is in many respects a win-win situation. This settlement is a good deal because, under its terms, all of the public threats from the site, and other risks, will be addressed from the Settling Defendants without further litigation. It involves a mix of work and payment of past costs and a penalty.
- The obvious advantages are that settlement addresses contamination which

will adversely impact children's health, and addresses contamination in an environmental justice area.

- Most of the area residents are in favor of this remedy, and the mayors of all three cities are in favor of this settlement (see section above regarding past issues with the City of Granite City).

- The decree facilitates and funds cleanup of lead-based paint in area homes.

- The decree helps area residents to participate, via employment, in the cleanup. The contractors must employ persons who have successfully completed training through the Superfund Job Training Initiative. At this site, last year, EPA co-sponsored training for area residents to train them for employment in the environmental remediation field; this was the first of such training at an NPL Superfund Site. From that training, 24 individuals were trained, 18 have maintained employment, where 8 were hired at this Superfund Site.

The decree will also have a precedential value for several reasons.

- By signing this decree, the generators are agreeing to the residential cleanup level that has been debated and litigated over numerous years on this site. The settlement also requires the 500 ppm lead cleanup standard determined on a yard by yard basis. The cleanup standard was developed by the IEUBK model. This decree will also have a wide ranging impact upon other lead-cleanup remedies where the model is used to develop a cleanup standard.

- The Supplemental Environmental Project is precedential in that it addresses lead-paint in homes for which Superfund money can not be used. With this money, along with EPA's pilot money, Madison County, Illinois has been able to obtain more funding in order to remediate even more homes in the Site area with deteriorating lead-based paint. This will also address the City of Granite City's concerns for lead-based paint to truly achieve a multi-faceted remedy to deal with different pathways of lead. The SEP incorporates a multi-agency approach by working with other agencies, and having the monies forwarded to Madison County to pool resources with other

grant money to address deteriorating lead-based paint. The SEP involves performance of risk assessments for approximately 2700 homes within the NL Site and abating and reducing risks at a minimum of 50 high priority homes in the area. The total expenditure for the SEP must be at least \$2,000,000.

The following past issues are worth pointing out.

As was stated above, in the past, the city of Granite City was, a party in a lawsuit seeking to enjoin the cleanup. This is addressed above in the background section. EPA did prevail in this litigation. Also, Alderman Tarpoff from Granite City, was the co-chair of an organization termed S.C.A.M. - Superfund Coalition Against Mismanagement. At one point, Mr. Tarpoff was very active in the Superfund reauthorization debate stating the federal government was wasting money at Sites; he appeared to focus on large lead sites. His allegations have not been proven, and he is no longer active in this debate. The Mayor of Granite City is now backing the cleanup, along with the other mayors, and has gone on record as such.

Last, this site has recently been selected by the GAO for an audit in a study where they are examining remedial actions costs at several large NPL Sites throughout the country.

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